

JAN 24 2013

S.B. NO. 960

A BILL FOR AN ACT

RELATING TO FORECLOSURES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that one little-known
2 problem of the national foreclosure crisis occurs when banks or
3 other mortgagees walk away from a foreclosure. This problem,
4 sometimes referred to as the "zombie title" problem, occurs when
5 homeowners move out after receiving notice of a foreclosure
6 sale. Prior to a public sale, the bank, mortgagee, or other
7 financial institution may walk away from the foreclosure process
8 and cancel the sale without notifying the homeowners.

9 The legislature further finds that homeowners legally own
10 their property and the homeowners' names remain on the title
11 until the date of public sale. Without a public sale, the
12 foreclosure process is left in limbo. Homeowners may be left
13 with all of the responsibilities for a property but none of the
14 rights that existed prior to the start of the foreclosure
15 process. Unfortunately for homeowners, there are no regulations
16 that require foreclosing mortgagees to inform a homeowner when a
17 bank decides not to foreclose. Unsuspecting homeowners may



1 suffer severe financial penalties as a result of canceled
2 foreclosure sales they knew nothing about.

3 Therefore, the purpose of this Act is to specify that it
4 shall be a prohibited practice for a foreclosing mortgagee or
5 foreclosing association to cancel a public sale at any time
6 before the date of the public sale without written notification
7 of the cancellation delivered to the mortgagor, the borrower,
8 and other specified persons.

9 SECTION 2. Section 667-56, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§667-56 Prohibited conduct.** It shall be a prohibited
12 practice for any foreclosing mortgagee to engage in any of the
13 following practices:

14 (1) Holding a public sale on a date, at a time, or at a
15 place other than that described in the public notice
16 of the public sale or a properly noticed postponement;

17 (2) Specifying a fictitious place in the public notice of
18 the public sale;

19 (3) Conducting a postponed public sale on a date other
20 than the date described in the new public notice of
21 the public sale;

22 (4) Canceling a public sale at any time before the date of



1 the public sale without written notification of the
2 cancelation delivered to the mortgagor, the borrower,
3 and any other person previously entitled to receive
4 notice under section 667-22(e); provided that this
5 paragraph shall not apply to a public sale canceled
6 after cure of default under section 667-28(d);

7 ~~[(+4)]~~ (5) Delaying the delivery of the recorded, conformed
8 copy of the conveyance document to a bona fide
9 purchaser who purchases in good faith for more than
10 sixty days after the completion of the public sale;

11 ~~[(+5)]~~ (6) Completing nonjudicial foreclosure proceedings
12 during short sale escrows with a bona fide purchaser
13 if the short sale offer is at least ten per cent
14 greater than the public sale price; provided that
15 escrow is opened within ten days and closed within
16 forty-five days of the public sale; and provided
17 further that a bona fide short sale purchaser shall
18 have priority over any other purchaser;

19 ~~[(+6)]~~ (7) Completing nonjudicial foreclosure proceedings
20 during bona fide loan modification negotiations with
21 the mortgagor; or



1 ~~[(7)]~~ (8) Completing nonjudicial foreclosure proceedings
2 against a mortgagor who has been accepted or is being
3 evaluated for consideration for entry into any federal
4 loan modification program before obtaining a
5 certificate or other documentation confirming that the
6 mortgagor is no longer eligible for, or an active
7 participant of, that federal program."

8 SECTION 3. Section 667-104, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "~~[(1)]~~**\$667-104[(1)] Prohibited conduct.** It shall be a
11 prohibited practice for any association to engage in any of the
12 following practices:

- 13 (1) Holding a public sale on a date, at a time, or at a
14 place other than that described in the public notice
15 of the public sale or a properly noticed postponement;
16 (2) Specifying a fictitious place in the public notice of
17 the public sale;
18 (3) Conducting a postponed public sale on a date other
19 than the date described in the new public notice of
20 the public sale; ~~[(e)]~~
21 (4) Canceling a public sale at any time before the date of
22 the public sale without written notification of the



cancelation delivered to the unit owner and any other
person previously entitled to receive notice under
section 667-92(e); provided that this paragraph shall
not apply to a public sale canceled after cure of
default under section 667-97(d); or

~~[-(4)]~~ (5) Completing or attempting to complete nonjudicial
foreclosure proceedings against a unit owner in
violation of section 667-92(c)."

SECTION 4. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

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Report Title:

Prohibited Conduct; Foreclosures; Public Sales; Zombie Title

Description:

Establishes that it is a prohibited practice for a foreclosing mortgagee or foreclosing association to cancel a public sale at any time before the date of the public sale without written notification of the cancelation delivered to the mortgagor, the borrower, and other specified persons.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

